Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-846

Robert Bramscher, Trustee in
Bankruptcy of Kurt W. Zahn
a/k/a Kurt Walter Zahn
a/k/a Curt Zahn a/k/a Kurt A. Zahn and
Anna Zahn a/k/a Ann Zahn,
Petitioner,

vs.

Kurt W. Zahn a/k/a Kurt
Walter Zahn a/k/a Curt Zahn
a/k/a Kurt A. Zahn and
Anna Zahn a/k/a Ann Zahn,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Kurt W. Zahn a/k/a Kurt Walter Zahn a/k/a Curt Zahn a/k/a Kurt A. Zahn and Anna Zahn a/k/a Ann Zahn, the respondents herein, by and through their counsel, Henry A. Sibbing, pray that the Writ of Certiorari not issue.

OPINIONS BELOW

This case, as properly stated by the petitioner, began on the 20th day of November, 1975, at which time Kurt W. Zahn and Anna Zahn filed their petitions for bankruptcy.

The Bankruptcy Judge, the Honorable Howard W. Hilgendorf, rendered an opinion on the issue of the amount of the Homestead Exemption to be set aside by the Trustee. The amount was determined to be $25,000, the Homestead Exemption in effect at the time of the filing of the bankrupts' petition.

This decision was affirmed on the 23rd day of June, 1978, by the Honorable John W. Reynolds, Chief Judge of the United States District Court — Eastern District of Wisconsin. In the opinion Judge Reynolds stated, "The court cannot improve on the decision of the bankruptcy court, entered January 10, 1977, and therefore adopts that decision as its own, ...". Judge Reynolds' opinion is included in the Trustee's Petition For A Writ Of Certiorari, page 16a.

The Seventh Circuit Court of Appeals affirmed the District Court decision on August 20th, 1979, adopting the District Court decision as its own.

REASONS FOR REFUSAL TO GRANT THE WRIT OF CERTIORARI

It is contended by the Trustee that there is a Constitutional issue involved, to-wit, that by allowing the $25,000 exemption to apply to the bankrupts it would, in effect, be denying creditors their rights under Article I, Section 10, of the United States Constitution, wherein "no State shall ... pass any Law impairing the Obligation of Contracts, ...".

Further, the Trustee states in his petition that there is a conflict among the circuits on this issue and cites the case of *England vs. Sanderson* (9th Cir., 236 F. 2d 641).

The bankrupts argue that by allowing the increased exemption of $25,000, the Court is not only following the mandate of Section 6 of the National Bankruptcy Act which specifically states that, "This Act shall not affect the allowance to the bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition ...", but also, as a practical matter, is not violating creditors' rights or debtors' obligations under a contract where the amount of the Homestead Exemption is not, in fact, relied upon in extending such credit and where such exemption is known by the creditors to be subject to change from time to time by the legislature.

There does not appear to be a conflict between the 9th Circuit and the 7th Circuit on this issue if the opinion of Judge Hilgendorf, the Bankruptcy Court Judge, is carefully read. As Judge Hilgendorf points out, the case of *England vs. Sanderson* (supra) relied heavily upon *Constance vs. Harvey,* CA2 (1954) 215 F. 2d 571, which in fact was subsequently reversed in 1961 by the United States Supreme Court in *Lewis vs. Manufacturers National Bank,* 364 U.S. 603 (1961).

Furthermore, the *England vs. Sanderson* case (supra), which the Trustee cites as authority for the proposition that there is a conflict among the various circuit courts, was very severely criticized in 1956 in the case of *In The Matter Of Melvin J. Towers,* 146 F. Supp. 882. In this case the California District Court, in an opinion written by the Honorable Judge Halbert, states in footnote 2, page 885, his sincere misgivings as to the wisdom of the decision in *England vs. Sanderson* (supra). Judge Halbert states as follows in the above-mentioned footnote: "Even though I am obliged, just as the Court of Appeals of this Circuit was obliged, to follow the rule laid down in *In re Rauer's Collection Co.,* 87 Cal. App. 2d 248, 196 P. 2d 803, I feel constrained to observe that I do not approve the rule, and I do not understand the reasoning by which the Court in that case reached the conclusion that an increase in the amount of a homestead exemption can only apply to obligations incurred after the date on which the statute authorizing the increase became law. In laying down this rule, they do violence to the fundamental concept underlying the benign object of the homestead statute as it is laid down in *Re Estate of Fath,* 132 Cal. 609, at page 613, 64 P. 995, 997. It is there said: 'The object of all homestead legislation is to provide a place for the family and its surviving members, where they may reside and enjoy the comforts of home, freed from any anxiety that it may be taken from them against their will, either by reason of their own necessity or improvidence, or *from the importunity of their creditors.*' (Emphasis added.)"

CONCLUSION

In conclusion, therefore, the respondents respectively request the Court to deny the Petition For A Writ Of Certiorari on the following grounds:

There is not a violation of creditors' 6th Amendment rights inasmuch as the Bankruptcy Act is designed to afford the bankrupt the opportunity to discharge his contractual debts and further provides that the bankrupt is entitled to claim as exempt that property which is deemed exempt at the time of the filing of the petition of bankruptcy under applicable State law. In this instance, the Wisconsin Homestead Exemption, Wisconsin Statute 272.20, in effect on March 12, 1974, provided for a $25,000 exemption.

The Judge in bankruptcy, the District Court and the Seventh Circuit Court of Appeals have, therefore, all ruled correctly in this matter in allowing the bankrupts the exemption in the amount in effect on the day of the filing of the original petition in bankruptcy.

Respectfully submitted,

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